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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 BOARD OF TRUSTEES OF THE
11 AUTOMOTIVE MACHINISTS
12 PENSION TRUST,

13 Plaintiff,

14 v.

15 ROSS ISLAND SAND AND
16 GRAVEL COMPANY,

Defendant.

CASE NO. C18-0571JLR

ORDER DENYING MOTION
FOR DEFAULT JUDGMENT
WITHOUT PREJUDICE TO
REFILING

17 **I. INTRODUCTION**

18 Before the court is Plaintiff Board of Trustees of the Automotive Machinists
19 Pension Trust's motion for default judgment against Defendant Ross Island Sand and
20 Gravel Company ("RISG"). (Mot. (Dkt. # 7).) The court has reviewed the motion, all
21 submissions filed in support of the motion, the relevant portions of the record, and the

22 //

1 applicable law. Being fully advised, the court DENIES the motion without prejudice to
2 filing an amended motion for default judgment as described herein.

3 **II. BACKGROUND & ANALYSIS**

4 On May 22, 2018, pursuant to Federal Rule of Civil Procedure 55(a), the Clerk
5 entered an order of default against RISG. (Default Ord. (Dkt. # 6)); *see* Fed. R. Civ. P.
6 55(a) (“When a party against whom a judgment for affirmative relief is sought has failed
7 to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk
8 must enter the party’s default.”). After the entry of default, if the amount at issue is
9 uncertain, the moving party must apply for order of default judgment. *See* Fed. R. Civ. P.
10 55(b)(2). On August 8, 2018, Plaintiff moved for such an order. (*See generally* Mot.)

11 Plaintiff brought this action pursuant to Sections 502(g)(2) and 515 of the
12 Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. §§ 1132(g)(2), 1145.
13 (*See generally* Compl. (Dkt. # 1); Mot. at 2-3.) In the present case, RISG failed to pay
14 outstanding contributions as required by the collective bargaining agreement (“CBA”) for
15 the delinquent period of November 2017, through June 2018. (Walker Decl. (Dkt. # 8)
16 ¶ 19.) Based on this delinquency, Plaintiff asserts that RISG owes it \$94,256.97, which
17 is comprised of \$73,853.75 in contributions, \$16,852.40 in liquidated damages, \$2,750.82
18 in interest, and \$800.00 in “referral attorney fees.” (*Id.* ¶¶ 20, 26.)

19 Section 502(g)(2)(D) of ERISA provides that in the event of a default judgment
20 from an action to collect delinquent contributions, the court shall award the plaintiff
21 reasonable attorney’s fees and costs of the action. 29 U.S.C. § 1132(g)(2)(D).
22 Additionally, the Trust Agreement provides for the recovery of attorney’s fees and costs.

1 (See Walker Decl. ¶ 12, Ex. B.) Plaintiff asks for \$598.00 in attorney's fees and \$445.00
2 in costs. (Dwarzski Decl. (Dkt. # 9) ¶¶ 4-6.)

3 In reviewing Plaintiff's motion and supporting materials, the court identified a
4 number of errors. First, in paragraph 20 of Joseph Walker's declaration, Mr. Walker
5 states that the interest for the amount due in November 2017 is calculated based on a 20-
6 day delinquency from December 20, 2017 (the due date), through January 4, 2018 (the
7 payment date). (See Walker Decl. ¶ 22.) Mr. Walker calculates the number of delinquent
8 days as 20. (See *id.*) However, there are only 15 days between December 20, 2017, and
9 January 4, 2018. This error renders both the interest calculated in paragraph 26 and the
10 spreadsheet attached as Exhibit E to Mr. Walker's declaration in error as well. (See *id.*
11 ¶ 26, Ex. E at 1.)

12 In addition, the court identified other errors in Exhibit E of Mr. Walker's
13 declaration. The total amount RISG owed Plaintiff for December 2017 was \$8,232.25.
14 (See Walker Decl. ¶ 15, Ex. C at 2 (attaching the employer remittance report for
15 December 2017).) The total amount RISG owed Plaintiff for January 2018 was
16 \$11,887.25. (See *id.* ¶ 15, Ex. C at 3 (attaching the employer remittance report for
17 January 2018).) However, the amounts due for December 2017, and January 2018, are
18 incorrectly reversed on the spreadsheet attached as Exhibit E to Mr. Walker's declaration.
19 (See Walker Decl. ¶ 20, Ex. E at 1.) The reversal of these numbers renders Plaintiff's
20 calculation of interest on the delinquent amounts erroneous as well. (See *id.* ¶ 22
21 (describing the method for calculating interest).)

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These errors undermine the court's confidence in the accuracy of Plaintiff's remaining submissions and other calculations. Thus, the court directs Plaintiff to correct the identified errors or provide a detailed explanation as to why the identified deficiencies are not, in fact, errors. The court also directs Plaintiff to scrupulously review its entire submission for accuracy prior to refileing an amended motion for default judgment.

Finally, the court notes that Plaintiff asserts that it is entitled to \$800.00 in “referral attorney fees” for the delinquent period of November 2017 through June 2018. (Mot. at 3; Walker Decl. ¶ 20.) Plaintiff asserts that it is entitled to this amount based on the CBA and Trust Agreement rather than Section 502(g)(2)(D) of ERISA. (*See* Walker Decl. ¶ 20.) Before awarding this amount, the court requires Plaintiff to provide a more thorough explanation of these fees, the work performed for these fees, and Plaintiff’s basis for recovering them.

III. CONCLUSION

Based on the foregoing analysis, the court DENIES Plaintiff's motion for default judgment but without prejudice to refiling with the corrections and revisions discussed herein (Dkt. # 7). The court ORDERS Plaintiff to refile an amended motion for default judgment within fourteen (14) days of the date of this order.

Dated this 24th day of August, 2018.

John R. Runt

JAMES L. ROBERT
United States District Judge